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5 July 1990

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Forty-fourth session
Agenda item 47
QUESTION OF CYPRUS

SECURITY COUNCIL
Forty-fifth year

Letter dated 2 July 1990 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

I have the honour to refer to the summit meeting of the European Council, which took place at Dublin on 25 and 26 June 1990, and to inform you that in its declaration on Cyprus the Council stressed the need for the prompt elimination of the obstacles that are preventing the pursuit of effective intercommunal talks aimed at finding a just and viable solution to the question of Cyprus on the basis of the mission of good offices of the Secretary-General.

Furthermore, the Council, in its declaration on Cyprus, deeply concerned at the situation, reaffirmed fully its previous declarations and its support for the unity, independence, sovereignty and territorial integrity of Cyprus in accordance with the relevant United Nations resolutions. It also reiterated that the Cyprus problem affects the relations between the European Community and Turkey.

It may be recalled that Cyprus challenged Turkey, during the Security Council meeting for the renewal of the mandate of the United Nations Peace-keeping Force in Cyprus on 15 June 1990, to remove the obstacles that blocked the efforts of the Secretary-General in restarting a meaningful and substantive dialogue between the two sides, by withdrawing the unacceptable pre-conditions.

Regrettably, Turkey did not respond to the challenge then. It is therefore to be hoped that she will do so now, thus opening the way for the Secretary-General to pursue his mission of good offices without hindrance.

I should be grateful if the present letter could be circulated as a document of the forty-fourth session of the General Assembly, under item 47, and of the Security Council.

(Signed) Andreas MAVROMMATIS
Ambassador
Permanent Representative of Cyprus
to the United Nations

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QUESTION OF CYPRUS

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Letter dated 2 July 1990 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

I have the honour to refer once again to the issue of the circulation by the Permanent Representative of Turkey of letters emanating from the secessionist entity in the Turkish-occupied areas of Cyprus. Despite the universal condemnation of the purported secession, which was considered by the Security Council as legally invalid, Turkey maintains its defiant attitude in violation of her obligations under the Charter.

We had hoped that, following our repeated protests against such circulation, the necessary influence would have been exerted on Turkey, stressing the need to use language acceptable to the Organization and not contravening decisions of the Security Council. Regrettably, not only did we not see any change in Turkey's attitude, but on the contrary that country had the audacity to once again abuse United Nations procedures for the circulation of a letter dealing with human rights in Cyprus.

The apparent concern of Turkey with human rights is hypocritical not only because of her well-known record of systematic and mass violation of human rights in Cyprus - duly documented in the report of the European Commission of Human Rights, excerpts of which we circulated in the past (see A/42/734-S/19262) - but also because of the continuing violation of the human rights of her own citizens. Turkey's dismal human rights record, particularly as regards the suppression of minorities and the abhorrent practices of racism and torture, have been the subject of continuous investigation not only by United Nations and regional human rights bodies, but also by a number of impartial and prestigious non-governmental organizations concerned with human rights. One of the most recent reports of Amnesty International, entitled "Turkey: Continuing Violations of Human Rights" (May 1990), focuses on these issues and as a result of serious investigation presents in a well-documented way the grim situation of human rights in Turkey.

An examination of the report, material parts of which are annexed hereto, would provide Member States with an opportunity to judge for themselves whether Turkey has any moral authority to make allegations directed against the very victim of her aggression.

I should be grateful if the present letter and its annex could be circulated as a document of the forty-fourth session of the General Assembly, under item 47, and of the Security Council.

(Signed) Andreas MAVROMMATIS
Ambassador
Permanent Representative of Cyprus
to the United Nations

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ANNEX

AMNESTY INTERNATIONAL, U.S.A

TURKEY

CONTINUING VIOLATIONS OF HUMAN RIGHTS

MAY 1990

Amnesty International U S A, 322 Eighth Ave. New York, N.Y. 10001

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EMBARGOED FOR 9 MAY 1990

AI Index: EUR 44/66/90

Amnesty International

9 May 1990

TURKEY: CONTINUING VIOLATIONS OF HUMAN RIGHTS

Amnesty International continues to be concerned about the imprisonment of prisoners of conscience*, systematic torture and ill-treatment of prisoners, unfair trials of political prisoners in military and state security courts and the imposition of the death penalty in Turkey. Thousands of people remain imprisoned for political reasons, including hundreds of prisoners of conscience. The use of torture continues to be widespread and systematic, in some cases resulting in death. Political trials in military and state security courts do not meet international standards governing fair trials. No executions have been carried out since October 1984, but over 260 prisoners under sentence of death, having exhausted all legal remedies, are currently awaiting a decision by the Turkish Grand National Assembly (TBMM) and the President on their execution.

Draft amendments to the 1982 Constitution, the Turkish Penal Code (TPC) and the Turkish Criminal Procedure Code (TCPC) announced in September and November 1989, concerning the length of detention (police custody), access of detainees to their lawyers, the death penalty and provisions under which prisoners of conscience have been convicted, had not been enacted by the end of March 1990. While these draft amendments, if passed, would represent a step in the right direction, they nevertheless would fall short of international standards in important respects.

* The term "prisoners of conscience" refers to persons imprisoned anywhere for their beliefs, colour, sex, ethnic origin, language or religion, provided they have not used or advocated violence.

1. Prisoners of Conscience

Trials and imprisonment of prisoners of conscience continued in 1989 and during the first months of 1990. The Human Rights Association in Turkey estimated that there were 5,000 political prisoners at the end of 1989. They included hundreds of prisoners of conscience, among them members of political organizations, trade unions and illegal Kurdish groups as well as journalists and religious activists.

...

In June 1989 Abdulkadir Aksu, Minister of the Interior, announced that during the first six and a half months of the year 4,426 people had been detained in southeastern Turkey where most of the population is of Kurdish origin. Of these, 1,558 had been charged and formally arrested. Most of the Kurdish political prisoners known to Amnesty International were charged with violent offences, but they also included prisoners of conscience imprisoned on account of their non-violent political or cultural activities.

The Turkish sociologist and writer Ismail Beşikçi was committed to Sağmalcılar Prison in Istanbul on 12 March 1990 in connection with his most recent book, entitled Kurdistan: The Colony between the States. He was charged under Article 142/3 of the Turkish Penal Code, which proscribes making "separatist propaganda". The book had been confiscated immediately after publication by Alan Publishing House in February.

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2. Torture and ill-treatment

Throughout 1989 and the early months of 1990 Amnesty International continued to receive allegations of torture and deaths caused by torture and believes that any person detained for a suspected political offence is still at serious risk of torture in Turkey. Even children were among the reported victims. Allegations of systematic torture were reported from all parts of the country. Torture of criminal suspects is also commonplace and occurs both in police stations and prisons.

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3. Torture testimonies

Amnesty International has received torture allegations from all parts of Turkey. The cases presented in detailed testimony are a selection from cases which occurred between March 1989 and March 1990 and concern torture allegations mostly from Ankara and Istanbul, where prisoners have been more outspoken about torture and from where information is more easily available than other parts of Turkey.

3.1 Ankara

Fatma Özyurt, a worker born in 1965, was detained on 21 March 1989 and interrogated for over 20 days at Ankara Police Headquarters. In a formal complaint she sent to Yenimahalle Prosecutor's Office from Ankara Closed Prison on 14 April she said that during her detention she had been stripped naked, hosed with pressurized cold water, suspended by her arms while hosed again, beaten and sexually assaulted and that she had been given electric shocks on her toes and fingers. Psychological torture had included being forced to witness the same torture being applied to her sisters Arife Semahat and Nahide Ozyurt in an attempt to extract a confession from them that they were members of the illegal organization Devrimci Sol. Fatma Özyurt was able to name four police officers whom she wanted to be prosecuted.

On 11 April she was examined by a doctor at the Forensic Institute in Ankara. The report certified injuries to her right hand. In her case four police officers were put on trial; this was still continuing at the end of March 1990.

Haydar Söylemezoğlu, a journalist for the political magazine Yeni Demokrasi (New Democracy) was detained on 12 August 1989 in Abdi Ipekçi Park while he was selling a leaflet published jointly by the political journals Toplumsal Kurtuluş (Social Liberation), Atak (Attack), Yeni Demokrasi and Iktidar Yolu (Way to Power). He alleged that he was beaten on the way to Ankara Police Headquarters.

"As soon as the door had closed behind me I was beaten and kicked in the face and stomach and fell to the ground. The deliberate kicking continued while I was on the ground and after some time which I cannot estimate I fainted. I was hosed with cold water and dragged through several corridors.

"Because I refused to undress I was beaten again. I was stripped naked and had to stand on something like a table. They wrapped thick cloths around my arms and I was suspended by my arms which were stretched out on either side. They then beat me on my penis and squeezed my testicles alternately. After that I was sprayed with water from high pressure hoses on my penis, mouth, nose and chest. When my arms turned numb I was taken down from the crucifix."

...

3.1.1 Forced "recruitment" of police informers

Over the last five years Amnesty International has received a large number of reports that, in particular, students were approached by members of the police force (mainly the secret service MIT - National Intelligence Organization) in an attempt to "recruit" them as police informers. In most reported cases the force used for "persuasion" consisted of threats and intimidation, but during the last year the number of reports indicating that the police was also using torture and ill-treatment increased. Some of these reports were later compiled in the Torture Report, Ankara 1989 issued by the Ankara branch of the Human Rights Association on 1 February 1990.

On 4 April 1989 at 1pm Cemal Gülmez, a teacher born in 1958, was apprehended outside the Faculty of Law in Ankara by three police officers in civilian clothes. He was taken outside the town to a deserted house near a lake and was accused of having links to the illegal TDKP. The officers said that they had followed him over 10 years and if he confessed to being a member he would not be punished. He only had to agree to work for them. Upon refusal Cemal Gülmez was slapped in the face and threatened that he would be killed and his corpse disposed of in the lake.

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3.1.2 Ill-treatment in Ankara Closed and Bursa E-type Prison

On the evening of 1 March 1989, 57 political prisoners in Ward 4 of Ankara Closed Prison were indiscriminately beaten. Tension in the prison had been growing since 23 February when some prisoners had been beaten on their way back from Ankara State Security Court. After a search on 1 March in Ward 4 all political prisoners there were ordered out of the ward. When they refused to leave they were beaten and most of them were injured.

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3.4 Southeastern Turkey

Most reports of severe torture and ill-treatment come from southeastern Turkey where the majority of the population is of Kurdish origin. Under current legislation the maximum length of incommunicado detention in the eight provinces under emergency legislation is twice as long as in the remaining part of the country. However, in an area with a highly underdeveloped infrastructure, where constant clashes between Kurdish guerrillas and the Turkish security forces are reported from remote settlements in rural areas, communciation is more than difficult and even the local Human Rights Association in Diyarbakır or Van, for instance, has only in a few cases been able to gather reliable, detailed information.

When an Amnesty International delegate visited the area in October 1989 the situation was very tense and even lawyers were reluctant to speak openly about the vast amount of human rights violations. However, almost all of them agreed that torture was applied routinely, involving not only the persons suspected of political offences, but in many cases involving all members of the family. In an interview with the weekly Sokak lawyer Orhan Doğan from the district town of Cizre said on 11 February 1990: "Since the establishment of the Regional Governor [on 19 July 1987] I have not had the chance to defend a client who has been imprisoned without having been tortured."

Among reports of torture and ill-treatment from southeastern Turkey are allegations that the security forces in their search for members and supporters of the guerrilla groups have rounded up the occupants of entire villages and beaten them. Often the young male population is taken for closer interrogation to the nearest police station and ill-treated for up to 30 days and more.

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3.5 Torture allegations from other places

Amnesty International has also received torture allegations from various other places in Turkey. One of these cases refers to the detention of some 18 alleged members of TIKKO in Adana. On 15 February 1990 Adana Police announced that they had been detained since 2 February. Some of them were held for up to 15 days before being taken to a judge who ordered their arrest.

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5. Unfair Trial

Amnesty International is concerned that many political prisoners in Turkey have been sentenced to imprisonment or death after trials which did not meet internationally recognized minimum standards for fair trials.

In December 1989 trials in military courts were still continuing despite the fact that martial law was completely lifted in July 1987. In May 1984 special courts known as state security courts were established in eight Turkish cities. However, these state security courts only started to work after martial law had been lifted in the area under their jurisdiction. Diyarbakir State Security Court, for instance, only started to operate in July 1987. These courts hear cases involving political offences committed after 1 May 1984. Their jurisdiction, as provided for in Article 143 of the 1982 Constitution of Turkey, covers offences against the internal or external security of the State.

...

Article 15 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Turkey in August 1988, provides:

> *"Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."*

However, in only a very few cases have military and state security courts initiated investigations into allegations made before them that statements given to the police were extracted under torture. In most cases the allegations were either ignored or the court disclaimed responsibility for dealing with these complaints. In a few cases courts forwarded formal complaints to the local prosecutor's office for investigation. Military and state security courts, moreover, have accepted statements extracted under torture as evidence.

In a recent case Izmir State Security Court reached a verdict of guilty without having examined the defendants' claim that their statements to the police had been extracted under torture. The trial concerned nine people charged with membership of the illegal organization "Ekim" (October). On the night of 27 to 28 April 1989 Muhtullah Abbasioğulları and Ali Korkmaz were apprehended in Izmir carrying leaflets and stickers signed Ekim. The leaflets and stickers referred to 1 May as International Labour Day.

Between 28 April and 1 May some further 13 people were detained in Izmir and interrogated as suspected members of Ekim. On 10 May, nine of them were taken to Izmir State Security Court to be charged. Turabi Polat, Paşa Abbasioğulları, Muhtullah Abbasioğulları, Arif Akyurtlakli, Ali Korkmaz, Abdullah Tapan and Mithat Uyanik were committed to Buca Prison in Izmir. Erdal Çalım and Mehmet Emin Anik were released, but later indicted together with the others. Abdullah Tapan was also conditionally released on 18 May.

On 20 July the first hearing in the Ekim trial took place in Izmir State Security Court. Eight defendants were present; six of them in pre-trial detention. All alleged that they had been tortured during interrogation.

Muhtullah Abbasioğulları handed over to the court a written statement in which he gave a detailed account of torture he suffered at Izmir Police

"After that the electric shocks started. I was suspended naked by my arms and something was fixed to my penis. I suddenly felt a horrible pain and only remember that I was jumping. I fainted. When I regained consciousness I found myself lying on my back and this time they applied the torture to my nipples, my small toe and small finger. This went on for some time during which I fainted several times. To escape further torture I agreed to show them an organizational flat, although I did not know of any flat belonging to the organization. My aim was to get breathing time."

In his petition to the court Muhtullah Abbasioğulları further stated that, following two unsuccessful attempts to discover such a flat, torture was increased. He continued:

"The officers attacked me like hungry wolves. I started to believe that they were going to kill me. I had to make a choice between life and death. I would have killed myself if I had had the opportunity. Finally I accused my brother Pasa of being my superior in the organization. By giving his name I escaped death."

In court Muhtullah Abbasioğulları admitted that he had distributed the leaflets with Ali Korkmaz, but denied being a member of any illegal organization.

...

6. The Death Penalty

Turkey was the only Council of Europe member state that carried out judicial executions in the 1980s. Between October 1980 and October 1984, 50 people were executed; 27 had been convicted of politically motivated offences, 23 of ordinary crimes. The last two executions, in October 1984, were ratified under the current civilian government. Around 800 people have been sentenced to death by military courts since the introduction of martial law in December 1978 and death sentences continue to be passed by both civilian and military courts. No executions have taken place since October 1984, but the number of people under sentence of death who had exhausted all legal remedies was 261 in March 1990. Of these 97 had been convicted of common criminal offences, 28 related to right-wing and 132 to left-wing political prisoners and the remaining four to Palestinian prisoners. These death sentences only need confirmation by the TBMM and the President, after which they can be carried out at any time.

Most of the 800 condemned men and women are political prisoners, convicted of involvement in violent activities. Most of them were sentenced to death by military courts and denied a fair trial. Military courts are responsible for trying civilians if their offences had led to "the announcement of martial law". Some of these trials continue despite the fact that martial law was lifted throughout Turkey in July 1987.

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POLICIES OF APARTHEID OF THE GOVERNMENT OF SOUTH AFRICA

Letter dated 2 July 1990 from the Permanent Representative of Mozambique to the United Nations addressed to the Secretary-General

I have the honour to request you to have circulated as an official document of the forty-fourth session of the General Assembly, under agenda item 28, the report of the Monitoring Group of the Ad Hoc Committee on Southern Africa of the Organization of Africa Unity (OAU) (see annex).

(Signed) Pedro Commissario AFONSO
Permanent Representative of
Mozambique to the United Nations
Chairman of the African Group

90-16539 1797j (E)

ANNEX

REPORT OF THE MONITORING GROUP OF THE OAU AD-HOC COMMITTEE ON SOUTHERN AFRICA, LUSAKA, ZAMBIA

8th June 1990.

A

INTRODUCTION

1.0.0 In fulfilment of the mandate given to it by the Lusaka Summit of the Ad-Hoc Committee of the Organisation of African Unity on Southern Africa of 19th March 1990 to monitor implementation of the "Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa (H.D) and the "United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa" (U.N.D) the Monitoring Group met in Lusaka, Zambia, every Friday beginning on 20th April 1990 up to, and including the 8th of June 1990. The exceptions were when the group met on 19th May in Cairo, Egypt on the eve of the Ministerial Meeting of the Ad Hoc Committee of the Organisation of African Unity on Southern Africa held in that country and also on the 26th and 27th May in Gaborone, Botswana during which time it held hearings to receive oral testimonies from representatives of concerned anti-apartheid and/or monitoring organisations and individuals invited directly from South Africa.

1.1.0 The Monitoring Group worked closely with the National Liberation Movements of South Africa. On 27th April 1990, the Monitoring Group received oral testimony from Dean Tsheuana Farisani, Deputy Dean of the Lutheran Church of South Africa. On 4th May 1990 in Lusaka, Zambia, it heard oral testimonies from Ms Feroza Adam, Ms Makhosi Khoza and Ms Nomaindia Mfeketho respectively representing the Federation of Transvaal Women, the Natal Monitoring Group and the

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Federation of South African Women. In Gaborone, Botswana, during its hearings between 26th and 27th May, it received oral testimonies from:

1.	Joyce Mabudafazi	-	Human Rights Commission
2.	Raymond Mahadi	-	Detainees Support Committee
3.	Neil Coleman	-	Congress of South African Trade Unions
4.	Linda Zama	-	UDF/COSATU
5.	John Aitchison	-	Natal Monitoring Group
6.	Reverend Ben Usimbi	-	Council of Churches
7.	Mahlubi Mbandazayo	-	Pan Africanist Congress of Azania
8.	Carter Seleke	-	Azania National Youth Union
9.	Mike Matsobane	-	National Congress of Trade Unions
10.	Hazel Leburu	-	Association of Women's Organisations
11.	Thamie Plaatjie	-	Pan Africanist Students' Association

1.2.0 In addition to oral testimony, the Monitoring Group also made extensive use of documentary evidence as well as evidence culled from the South African and other mass-media. The result of the Monitoring Group's consultations and investigations are the following findings:

B

FINDINGS

I PRINCIPLES

2.0.0 Both declarations identify a common set of principles fundamental to democracy in South Africa and upon which agreement by all parties to the South African conflict shall constitute the foundation for an internationally acceptable solution which shall enable South Africa to take its rightful place as an equal partner among the African and World community of nations.

2.1.0 The overwhelming majority of the people of Southern Africa subscribe to these principles in their entirety.

2.2.0 The Apartheid regime has yet to positively, and comprehensively respond to these principles as the speech of Mr. F.W. de Klerk of 2nd February 1990 and the 12 point speech on Minority Rights made by Acting President Mr. G. Viljoen on 11 May 1990 ran contrary to these principles. There are at least three interrelated issues which have a direct bearing on principles and about which the Apartheid regime has made itself clear: their rejection of majority rule through universal adult suffrage on the basis of one person one vote, under a common voters roll of all South Africans; their insistence on "Group Rights" and on "Power Sharing".

2.3.0 In the opening of his speech of 2nd February 1990 to the white parliament, Mr. F.W. de Klerk said: "The general election on September 6th 1989 placed our country irrevocably on the road of drastic change. Underlying this is the growing realisation by an increasing number of South Africans that only a negotiated understanding among the representative leaders of the entire population is able to ensure lasting peace." He then went on to add that "On its part, the Government will accord the process of negotiation the highest priority." However positive this professed commitment to change and to negotiation may be construed to sound, it is not matched by an adequate clarity of the regime's position on the principles contained in both declarations. Where there is clarity on their positions, they are invariably at variance with the principles contained in the Declarations. In several places Mr. F.W. de Klerk's speech even suggests that those principles, which the international community holds to be axiomatic, should be the subject of debate in his parliament, and that in the broader context, they should be negotiated by all parties to the South African conflict.

2.4.0 Further on, Mr. F.W. de Klerk, in his speech says; "A changed dispensation implies far more than political and constitutional issues. It cannot be pursued successfully in isolation from problems in other spheres of life which demand practical solutions. Poverty, unemployment, housing shortages, inadequate education and training, illiteracy, health needs and other problems still stand in the way of progress and prosperity and an improved way of life." In detailing the ills of Apartheid that need to be redressed, he sounds positive on detail, yet again this is no substitute for the regime's commitment to the principles.

2.5.0 Further on, Mr. F.W. de Klerk says: "the agenda is open and the overall aims to which we are aspiring should be acceptable to all reasonable South Africans." The presumption that the aims of the Apartheid regime should be acceptable to all reasonable South Africans implies that the regime is the one that sets the standards for what is or is not reasonable - not least on the issue of principles.

2.6.0 Anticipating and trying to temper the optimism that may arise in the wake of the measures announced earlier on in his speech, Mr. F.W. de Klerk warns: "equally it should not be interpreted as a deviation from the government's principles, among other things,against their (the regime's adversaries) economic policy and aspects of their constitutional policy. This will be dealt with in negotiation."

2.7.0 Paragraph 16.1 in the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa (H.D.) or No.3a, United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa (UND), states that "South Africa shall become a united, democratic and non-racial state. The regime's insistence on Group Rights with its implicit division of South Africans along racial and ethnic lines, directly opposes this principle.

2.8.0 Paragraph 16.2 of the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa (H.D) or No. 3b United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa (UND), states that: "All its people shall enjoy common and equal citizenship and nationality, regardless of race, colour, sex or creed." This principle is again opposed by the regime's insistence on "Group Rights."

2.9.0 Paragraph 16.3 in the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa (H.D) or No.3c United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa (UND), states that: "All people shall have the right to participate in the government and administration of the country on the basis of a universal suffrage, exercised through one person one vote, under a common voters roll." The Apartheid regime rejects this principle by insisting on "Group Rights" and refers to it as "simplistic" and "unsophisticated."

3.0.0 The principles in Paragraph 16. 1-3 of the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa (H.D) and the corresponding paragraphs in the United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa (UND), are fundamental and form the formal basis for all the other principles enumerated therein. On the part of the Apartheid regime, the rejection of majority rule, insistence on "Group Rights" and "Power Sharing", taken collectively constitute its fundamental outlook within which its statement of approach is formally located. In all its official pronouncements it invariably links the rejection of majority rule and other principles mentioned in the Declarations to "Group Rights" and "Power Sharing" or both. For this reason, the latter are examined in details below:

Group Rights and Power Sharing

4.0.0 The recurrent themes in pronouncements made by the Apartheid regime either through formal documents such as the Five Year Plan of Action of the Afrikaaner Nationalist Party, or through speeches and statements to the mass media by Mr. F.W. de Klerk and the 12 point speech on Minority Rights given by Acting President Mr. G. Viljoen on 11 May 1990 are:

(a) their rejection of majority rule and

(b) their insistence on the need to protect "Group Rights" through "Power Sharing".

4.1.0 The Monitoring Group is of the view that the Apartheid regime's rejection of majority rule and their insistence on "Group Rights" and "Power Sharing" constitute an attempt to reserve white minority domination by retaining its essentials while adapting its appearances to the changed circumstances characterised by the inexorable escalation of the struggle of the South African people for a united, democratic and non-racial South Africa.

4.2.0 What informs the Apartheid regime's insistence on "Group Rights" and "Power Sharing" is a set of two interrelated objectives:-

4.3.0 Through "Group Rights", the Apartheid regime seeks to give overriding political significance to the overwhelmingly rejected ethnic and racial divisions which Apartheid has always sought to impose, maintain and exaggerate between the South African people. The perpetuation and elevation of these divisions, will have the effect of undermining the sense of common nationality shared by the overwhelming majority of South Africans and in this manner undermine the natural basis of both the possibility and the necessity of creating a system of democratically determined and sustained majority rule which transcends race, colour, creed and gender.

4.4.0 To the universally accepted demand of the South African people for majority rule through universal adult suffrage based on one person one vote, on a common voters' roll, the Apartheid regime counterposes and insists upon "Power Sharing" which consists of dividing the South African people into racial and ethnic political units sharing political power on the basis of absolute equality between such units, contrary to, and in defiance of concrete demographic realities. Central to this dispensation is the stipulation that decision making on matters that affect all "groups" shall be based on consensus.

4.5.0 Considering that the white minority presided over the creation and maintenance of the Apartheid status quo and that it has shown itself patently unwilling to voluntarily relinquish it, "Power Sharing" is designed to arm the white minority with a veto power to thwart and frustrate the demand of the South African people for an end to Apartheid and for the creation of a united, democratic and non-racial South Africa.

4.6.0 By deliberately ignoring the fact that the overwhelming majority of the people of South Africa - including an ever growing number of whites - prefer, for political purposes, to define themselves as being primarily South Africans and only secondarily affiliated to a given race or ethnicity, "Group Rights" and "Power Sharing" can never by definition, serve as a basis for a just and lasting solution to the South African conflict.

Pretoria's Stated or Implied Position on Other Principles

5.0.0 In his address of 2nd February 1990 to the white parliament, Mr. F.W. de Klerk committed his government, to the realisation of, inter alia, the following aims ....." a new democratic constitution; universal franchise; no domination; equality before an independent judiciary; the protection of minority as well as of individual rights; freedom of religion; a sound economy based on proven economic principles and private enterprise;

dynamic programmes directed at better education, health services, housing and social conditions for all." Though some of it sounds positive, the above cited passage is merely a statement of intentions which makes no commitment to the principles contained in the Declarations.

5.1.0 Considering that Apartheid itself was originally presented by its authors as being in the best interest of all South Africans, and taken in conjunction with the rejection of majority rule and insistence on "Group Rights", the cited passage is far less than a reliable guarantee that the Apartheid regime is committed to the dismantling of Apartheid and the creation of a united, democratic and non-racial South Africa. (Paragraph 16.1 in the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa).

5.2.0 With regard to the principle: "All shall enjoy universally recognised human rights, freedom and civil liberties, protected under an entrenched Bill of Rights". (16.5 Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa). Mr Gerrit Viljoen, in his 11th May 1990 speech said: "It is already envisaged that the planned Bill of Human Rights, besides protecting individual rights and freedoms, may also protect group values like language, culture, religion, by upholding the right of the individual concerned to exercise those values and rights in a group context." The emphasis the Apartheid regime lays on "Group Rights" in this context, represents a radical and insidious departure from the proven assumption that informs a Bill of Rights as universally understood and accepted, namely, that the protection of individual rights and freedoms suffices for the protection of rights of any group based on voluntary association. Based on the precedent of Apartheid itself, there is reason to believe that the departure is deliberate. By seeming to place individual and group rights on the same footing, the possibility is raised of institutionalising the

right to the formation and protection of exclusivist groupings and, therefore, to racism itself. This is contrary to Paragraph 16.5 of the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa and 3e of the United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa.

5.3.0. With respect to the principle that: "South Africa shall have a new legal system which shall guarantee equality before the law." (16.6 Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa or 3f of United Nations Consensus Declaration on Apartheid and Its Destructive Consequences in Southern Africa). Mr. Gerrit Viljoen's twelve point Minority Rights speech of 11 May 1990, though silent on the type of legal system envisaged by the Apartheid regime, nevertheless contradicts Principle 16.6 of the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa and 3f of the United Nations Consensus Declaration on Apartheid and Its Destructive Consequences in Southern Africa. Equality of groups before the law, as implied by the notion of 'Group Rights' in the service of the preservation of white exclusivity and/or domination is incompatible with equality of individuals before the law.

5.4.0 With respect to the principle: "South Africa shall have an independent and non-racial judiciary." (16.7 Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa or 3g of United Nations Consensus Declaration on Apartheid and Its Destructive Consequences in Southern Africa). In his speech of 11 May 1990, Mr. Viljoen said, "that an independent judiciary will exercise judicial authority in cases between one person and another and between citizens and the state". However, he locates these remarks within the framework of the thrust of his speech which is the Apartheid regime's perceived need to protect group rights. The Apartheid regime gives priority to the protection of group rights over the necessity of an independent judiciary. This is contrary to Paragraph 16.7 of the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa and 3g of the United Nations Consensus Declaration on Apartheid and Its Destructive Consequences in Southern Africa because it colours justice with a racial and/or ethnic considerations.

5.5.0 With respect to the principle: "There shall be created an economic order which shall promote and advance the well-being of all South Africans." (16.8, Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa or 3h in United Nations Consensus Declaration on Apartheid and its Destructive

Consequences in Southern Africa), Mr. F.W. de Klerk, in his BBC interview, lays emphasis on the need to protect property rights. Considering that more than 80% of the wealth and 87% of the land mass of South Africa is concentrated in the white minority's hands, this means the racial imbalance in favour of whites in the economic distribution of South Africa's wealth will continue. Mr. Viljoen, in the 12 point Minority Rights speech seeks to entrench this fundamental injustice by saying "That property rights (including the land) shall be honoured and there shall be no arbitrary dispossession, or dispossession without reasonable compensation."

5.6.0 With respect to the principle that: "A democratic South Africa shall respect the rights, sovereignty and territorial intergrity of all countries and pursue a policy of peace, friendship and mutually beneficial co-operation with all peoples." (16.9 Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa or 31 United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa), Mr. F.W. de Klerk, in his February 2nd, 1990 speech said inter alia "The season of violence is over. The time for reconstruction and reconciliation has come." However, Apartheid violence still continues in the region as reflected in the activities of the surrogate groups of UNITA and MNR in Angola and Mozambique respectively and in South Africa itself.

5.7.0 From the foregoing, the apartheid regime still refuses to affirm the sets of fundamental principles of democracy contained in the Declarations. It continues instead, to insist that these principles are subject to negotiation.

5.8.0 At the level of rhetoric, the regime has been at great pains to attempt to dispel suspicions that its emphasis on "Group Rights" is but a disguised strategy for face-lifting apartheid and preserving white domination.

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5.9.0 Its most recent pronouncements, notably Mr. F.W. de Klerk's speech of the 17th April to the white parliamentary debate on the budget and the responses he gave to questions on the 19th April in the same session as well as the regime's Minister of Constitutional Affairs, Gerrit Viljoen's speech on 11 May 1990, show the regime's stubborn refusal to accept majority rule through universal adult suffrage on the basis of one person one vote, on a common voters' roll of all South Africans.

II CLIMATE FOR NEGOTIATION

6.0.0 In order to create the necessary climate for negotiation, both Declarations require the regime, to, at the least:

(i) Release all political prisoners and detainees unconditionally and refrain from imposing any restrictions on them;

(ii) Lift all bans and restrictions on all proscribed and restricted organisations and persons;

(iii) Remove all troops from townships;

(iv) End the State of Emergency and repeal all legislation, such as, and including the Internal Security Act, designed to circumscribe political activity, and

(v) Cease all political trials and political executions.

(i) Release Political Prisoners and Detainees

7.0.0 Mr. F.W. de Klerk, by announcing that "people serving sentences merely because they were members of one of the (previously banned) organisations or because they committed another offence which was merely an offence because the prohibition of one of the organisations was in force will be identified and released. Prisoners who have been sentenced for other offences such as murder, terrorism or arson are not to be affected by this" has deliberately limited the definition of political prisoner.

Consequently, the overwhelming majority of people serving sentences for offences which occured in the course of the struggle against Apartheid were excluded from the very narrow definition of political prisoner used by de Klerk in his 2nd February speech. His initiative is limited to those political prisoners convicted of affiliation with or furthering the aims of a banned organisation. As such, the regime has so far only released approximately 72 political prisoners, including Nelson Mandela. (See Annex 1 attached).

7.1.0 According to oral evidence received by the Monitoring Group, and as estimated by monitoring groups in South Africa, there are more than 3000 political prisoners in Apartheid jails. Amongst these, there are currently approximately 350 prisoners serving sentences for convictions under the South African security legislation dealing with unrest related offences such as public violence, arson and malicious damage to property. (See Annex 2 attached).

7.2.0 In order to criminalise anti-apartheid political activity, opponents of the Apartheid system were charged with common law crimes, rather than political offences. Accordingly, there are many political activists serving sentences for such offences as public violence, arson, murder and terrorism.

8.0.0 Since the adoption of the Declarations, the Apartheid regime has neither given indication of intent to halt the practice of detention without trial nor has it made a categorical commitment to release political detainees. What the regime has done is to indicate that the period of detention in terms of security emergency regulations will be limited to a renewable six months and that detainees will acquire the right to legal representation and a medical practioner of their own choosing. As such, the practice of detention without trial continues.

8.1.0 There are over 300 detainees without trial presently held under the State of Emergency including children as young as 12 years old. Thirty-two adults are held under Section 29 of the Internal Security Act, which provides for indefinite detention for the purposes of interrogation, with no access to the family or lawyer. In February 1990, the Minister for Law and Order, Mr. Adriaan Vlok stated that only criminals were being detained. However, the detention of members of the executive bodies and ordinary members of organisations continues. For example, Mr. Edwin Phasha, a Chemical Workers Industrial Union member working in the mines in Secunda was detained under emergency regulations on 22 March 1990. He was released 3 - 4 weeks later without any charges having been laid against him. (See Annex 3 attached).

8.2.0 Ex-detainees are natural targets for re-detention. Recently, 4 executive members of the Tembisa Youth Congress were detained. After their release they gave a press interview at which they were quoted as having said they intended implementing "peoples courts." A short time after their release, they were re-detained under the State of Emergency. One of them was a young woman, Deborah Marakalla. This was her third detention. The last detention was for a duration of one and a half years. She is the mother of an asthmatic child, Lerato, aged 5 years, and is herself diabetic.

8.3.0 When women are detained, they invariably end up in solitary confinement. As a result, they are subjected to sexual harassment. Detention of pregnant women is particularly serious because they are denied access to natal care. Furhter, women are anxious about the welfare of their families, wondering whether their children are adequately taken care of while their husbands are at work or in detention, and all the myriad of worries a woman would have separated from her family.

8.4.0 According to January 1989 estimates, there were almost 1,000 detainees who embarked on a hunger strike in an effort of gaining their release. Invariably, all of them have demanded to be charged or get unconditional release. Though the hunger strike is frequently a necessary form of struggle, it has had adverse and sometimes irreversible effects on the health of detainees.

(ii) Lifting of Bans and Restrictions

9.0.0 While organisations and individuals have been unbanned, and although Mr. F.W. de Klerk indicated in his February 2nd speech that conditions imposed in terms of security emergency regulations on 374 people on their release are being rescinded,and that the regulations which provide for such conditions are being abolished, the regime retains the power to impose new banning and restriction orders on organisations and individuals because the Internal Security Act and other repressive legislation remain intact. As such despite the partial amendment of the State of Emergency Regulations in March 1990, there is a question mark over what political action such as boycotts, campaigns and creation of alternative structures will be permitted. For example, the United Democratic Front and the National Union of South African Students are prohibited in terms of proclamations issued under the Affected Organisations Act from receiving any foreign funding.

9.1.0 The blanket ban on all political gatherings without permission continues. Powers under the State of Emergency and Internal Security Act to break up such gatherings continue to be exercised on an almost daily basis, frequently involving a high level of force. Freedom of assembly continues to be severely restricted, constituting a major source of conflict at the present time. On April 1, 1990 the annual blanket ban on all outdoor political gatherings without permission, was renewed for the fifteenth consecutive year under the Internal Security Act. Late in

1989, permission for peaceful political activities such as protest marches and rallies began to be granted in certain instances. However, attitudes have hardened. Permission for gatherings is frequently refused and in some areas the security forces have returned to their former use of extreme force in breaking up peaceful political gatherings and demonstrations, resulting at times in heavy loss of lives. Estimates indicate that 139 people have been killed and 1429 injured directly or indirectly by Police action since Mr. de Klerk's address of 2nd February. Such heavy handed and irresponsible action prevents peaceful political activity by the communities and particularly the youth.

9.2.0 While a number of names have been removed from the Consolidated List, the list still continues in existence. The persons whose names still appear on the list are restricted in terms of Section 18 of the Internal Security Act, from becoming members, office bearers or officers of any organisation considered for prohibition under the Internal Security Act (ISA). They are also restricted from taking part in the activities of these organisations. This may severely affect the recruitment drive of national liberation organisations presently re-organising in South Africa, its leadership appointments as well as hamper free political intercourse.

9.3.0 Furthermore, although the ban on organisations has been lifted, these organisations are still liable to prosecution for offences under the ISA, such as, terrorism and related offences, promotion of communism, (defined as violence, sabotage and harbouring), promoting and favouring the aims of certain organisations which were prohibited (statutes enabling the government to ban organisations are still in place); incitement, offering or accepting assistance for organised resistance against the laws of the Republic and fomenting racial hostility. Therefore, in so far as these provisions remain in the Statute Book, members of National Liberation Movements, who for instance, call for economic sanctions are still liable

to prosecution for sedition or sabotage.

(iii) Troops in Townships

10.0.0 According to oral evidence received by the Monitoring Group, South African Defence Force (SADF) troops remain in the township of Natal and the "Homelands" and persist in their repressive role. In the case of Natal, under the pretext of seeking to arrest internecine violence which it has actually fomented, the regime has in addition sent in the notorious Batallion 32 which had hitherto served in Namibia.

10.1.0 In the majority of cases the presence of South African Defence Force troops is to reinforce the police for the purpose of buttressing the imposition or perpetuation of Apartheid. This is particularly the case where communities are capable of maintaining law and order on their own. In such cases the presence of Apartheid troops only serves to foment and accentuate violence. There are cases also where communities are unable to ensure law and order because of lack of appropriate resources. In such cases, and provided deployment is affected through consultation with the community, troop presence may be helpful.

(iv) End the State of Emergency and Repeal all Repressive Legislation

11.0.0 The general increase in the incidence of violence throughout South Africa, has been the result of extensive police involvement and incitement. The pervasiveness of state repression contributes to the obviation of the creation of the necessary climate for negotiation Furthermore, it is important to note that state repression has been made possible by the State of Emergency which is yet to be lifted and the various security legislation still in place.

11.1.0 The Internal Security Act was renewed in March 1990 and provides,inter alia, for declaring certain organisations unlawful;

prohibition of certain publications; initiations of investigations into various organisations and publications with a view to considering their prohibition; the keeping of a Consolidated List of members of unlawful organisations, banning and restrictions of organisations and individuals and detentions.

12.0.0 The State of Emergency declared under the Public Safety Act, continues. Of the 4 sets of emergency regulations, two have been withdrawn, namely, the Media and Education Regulations. The third, Prison Regulations, remains unaltered.

12.1.0 The fourth, Security Emergency Regulations, has been amended to provide slight changes in the length of detentions and detention conditions. It still provides for the imposition of restrictions on the activities of organisations and empowers the Commissioner of Police to issue orders prohibiting certain activities. For example, despite, announced new detention conditions providing for access to legal representation and personal medical practioner, the Sports Editor of the Sowetan, Horatio Motjuadi was detained and placed in solitary confinement for three months since February 1990. Denied access to legal representation and to his family, it was only the development of a heart problem which compelled prison authorities to take him to hospital.

12.2.0 Regulation 14A (a new inclusion) provides that, in judicial proceedings, when the question arises as to whether the Minister of Law and Order formed an opinion that steps were necessary for the safety of the public, the maintenance of public order, the termination of the State of Emergency, in acting under regulations 3(3) (extending a detention), regulation 7(1) restricting an organisation), regulation 8(1) (restricting a person) or regulation 9(1) (prohibiting particular activities or acts),

it shall not be necessary for the Minister to give oral evidence. All that is required to prove that necessary opinion was formed is an affidavit made by the person who alleges that he was the Minister of Law and Order at that time when such steps were considered and taken and that he was of the opinion that such steps were necessary for the safety of the public, the maintenance of public order or the termination of the State of Emergency. This affidavit or purported affidavit made by the Minister or someone alleging that he is the Minister shall, "on its mere production at the said proceedings by any person, be accepted as conclusive proof of the facts stated therein". This regulation has the effect of freeing the Minister from proper explanations in court. It protects him from ever having to be cross-examined on how he applied his mind in exercising his vast powers under the regulations. It goes further than that: it implies that the affidavit or purported affidavit does not even have to be made by the Minister of Law and Order. It can be made by a person who simply alleges that he is the Minister of Law and Order and it cannot be questioned. This regulation appears to have been introduced to avoid problems experienced by the State in prosecutions instituted against ex-detainees who either escaped from detention or who, the State alleged, had contravened restriction orders.

12.3.0 An analysis of the Emergency Regulations reveals that they do not so much confer new powers on the police, as a new way of exercisng them. The combined effect of framing the discretion of police officials in a subjective form, of limiting legal liability of the security forces, of curtailing the media and the courts, of empowering rank and file members with a discretion previously reserved for officers, serves to free the security forces from supervision and accountability.

12.4.0 Moreover, the security forces seldom, if ever, use emergency powers and appear to rely on their 'ordinary' police powers to search,

seize and arrest. Where emergency powers have been used, it has been to exclude lawyers or journalists from 'unrest' situationsor funerals. The State of Emergency is only used against the political activities of National Liberation Movements and democratic organisations and never against the vigilante and right wing groups.

12.5.0 It is the Public Safety Act (PSA) which enables the declaration of a State of Emergency (SOE), grants even wider and more unbridled powers and is capable of use on a mass scale. Since 1985 (except for a short period of 3 months in 1986) South Africa has been under a State of Emergency, which is due to expire at midnight on 8th June 1990.

13.0.0 The Apartheid regime has a multitude of other laws for the purpose of state repression. Some of these are:

- The Supression of Communism Act which in effect equates opposition to the Apartheid state with the promotion of communism;

- The Supression of Terrorism Act which in effect equates opposition to Apartheid with terrorism;

- The Defence Act provides for the prohibition of access to designated areas and authorises various other means of control to prevent 'internal disorder' simply by declaring an area to be operational. "Under this Act, for instance, the South African Defence Force (SADF) or any portion thereof may be mobilised to combat internal disorders, and members of the SADF used for this purpose have all the powers, duties and immunities enjoyed by or imposed upon, the South African Police under the Police Act ";

  The Intimidation Act makes it a criminal offence to

intimidate anyone by threats or violence. People organizing protest activities such as strikes and boycotts have been charged under this Act.

13.1.0 In addition, thousands of people have been charged with the common law crime of public violence and related criminal offences, such as arson, trespass and malicious damage to property.

Some Cases of Continuing Repressive State of Violence and their Adverse Effect on Attempts to Create the Climate Necessary for Negotiations

(a) Deaths in Police Custody

14.0.0 Since the beginning of 1990, 4 people held for political reasons, have died in police custody. One was 16 year old Nixon Phiri. He was amongst a large group of children and youth who were taken to the Welverdiend Police Station for purposes of interrogation. They were called into interrogation rooms, one at a time. When Nixon's turn came, they could hear him screaming, and eventually, there was silence. His interrogators came out of the room, closed the door and went into another room and continued interrogating the others. They allege that Nixon, never came out of the room and was not seen again. The post mortem findings revealed severe head injuries and bruising all over his body. There were three witnesses who were prepared to testify. Two of the three, have been shot down by police. The third boy, 16, is on the run fearing for his life.

14.1.0 Another death in detention, was that of Clayton Sithole, detained under Section 29 of the Internal Security Act. Mr. de Klerk hastily set up a commission of inquiry into the death which the judge found as "suicide".

14.2.0 The death of Michael Zunga, followed. Although organisations called for similar inquiries into the Phiri and Zunga deaths, there has been a total lack of response by Mr. de Klerk. In March, another detainee, Lucas Tlhotlhomisang, a civic member from Schweitzer-Reneke died. Similarly, there has been no enquiry into his death.

14.3.0 The police have responded to the mass actions of communities in an unpredictable way. Mass marches and gatherings have taken place with either no police in evidence or keeping a low profile. When this happens, there is never a problem. At other times, the police are there in force and act in a brutal manner.

14.4.0 In January, in Khutsong, at a gathering to protest the death in police custody of Nixon Phiri, police fired on the people without warning. A horrified Australian diplomat, Mr. Goledzinowski witnessed the deaths and wounding of the people and was so enraged that he publicly criticised the police.

14.5.0 There was an unprovoked attack on people at a peaceful Sebokeng march, 14 people were killed and hundreds wounded. President de Klerk has announced that an independent enquiry will be instituted.

14.6.0 On 19 April 1990 in Ramulotsi township, Orange Free State, four pupils between the ages of 13 - 16 were shot by the police and died on the spot while another was fatally wounded and died later in hospital. The police justified the killings by stating that they were attacked by the pupils with stones. The residents stated that the pupils were on a protest march and that there had been no violence.

14.7.0 Early this year, in Volkstrust, a 15 year old was shot dead when police opened fire on a group of pupils setting up street barricades.

They had been protesting against the detention of 12 pupils from their school after a local businessman's house was stoned. The police gave the children five minutes to disperse.

14.8.0 In April, in Northern Cape, a seven year old boy was shot. A resident claimed the boy had been shot after police and members of the S.A.D.F.. assisted by men from a right wing group, had moved into the township and ordered people attending a disco to disperse. He claimed that the police had then fired into the crowd and the boy was hit in the face. The police say that the boy had been killed during unrest. Police had opened fire on a group of people after they had thrown stones at them.

(b) Torture and assault

15.0.0 There are constant reports of assault and torture in custody. The small outlying areas are the worst hit as they are tucked away from public scrutiny.

15.1.0 Every adult white person in Apartheid South Africa can legally acquire up to twenty-seven weapons, while the oppressed majority are not permitted to keep even home-made weapons to protect themselves. In May 1990, the regime sent 1000 police and soldiers to raid an African township in Welkom for "weapons" whilst white vigilantes in Welkom have been shooting Africans at random. The regime, thus far, has made no attempt to curb the racist and murderous activities of the armed white vigilantes. On the other hand there is evidence of connivance between the regime and the white vigilantes.

(c) Missing Children

16.0.0 Many children and youth remain refugees in their own land, fleeing police or vigilantes, thus making it very difficult for parents

to know what has happened, because they do not necessarily have means to communicate with them. There are reports of people missing from many areas where there has been unrest and a lot of police activity. Boys are the main target in house to house searches. For example, in Khutsong, boys were taken from their houses. They were interrogated. Some were released and some of whom fled the area and are hiding in other communities. The parents are desperate because they do not know what has happened to their children.

(v) Cessation of Political Trials and Political Executions

17.0.0 Although the regime has announced a moratorium on executions and the commutal of the death sentences imposed on twenty-three political prisoners to life imprisonment, sixty-four other policial prisoners remain in deathrow. Their fate remains uncertain because the Apartheid regime retains the legal power to lift the moratorium and resume executions. There are also over 300 political trials still in progress. (See Annex 4 attached).

17.1.0 The regime has yet to accede to Protocol 1 of the Geneva Convention relative to the treatment of prisoners of war of August 12, 1949, which recognises wars of National Liberation as legitimate armed conflicts and rules that captured combatants belonging to the armed formations of National Liberation Movements should be treated as prisoners-of-war. Accordingly, captured combatants of Umkhonto We Sizwe, have been charged with criminal offences, including murder. Some have been sentenced to death and executed. Others convicted are serving sentences. None have ever been accorded prisoners-of-war status.

(vi) End Informal Repression

18.0.0 Although the Harare Declaration of the OAU Ad-Hoc Committee

on Southern Africa on the Question of South Africa and the United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa require the Apartheid regime to fulfill, at the least, five conditions in order to create the necessary climate for negotiations, the Monitoring Group has found that there exists intense violence throughout South Africa, brought about by state-sponsored informal repression and that it also militates against the creation of the necessary climate for negotiation.

18.1.0 Informal repression in the South African context is not new, but received a tremendous boost with the establishment of the National Security Management System, with the National Security Council at its head. In Security matters, this council became more powerful than the cabinet itself. Its tentacles reached every level of society through Joint Management Centres by co-opting local councils, local industry and local business, etc. In this manner anti-apartheid activists and organisations are identified, monitored, harassed and neutralised in various ways. Of late, the role or the profile of the National Security Council has been subdued but its basic features remain intact. It remains a major intimidatory factor against free political activity.

18.2.0 Growing fascist violence of white right wing groups and the regime's inclination to condone this have led to the escalation of violence against the majority of the people in South Africa. For instance, the refusal of the state to repeal the Arms and Ammunitions Act which allows every white adult up to twenty-seven weapons has directly contributed to the escalation of violence in the country. As a result white fascist groups, such as the Afrikaner Weerstandsbeweging are heavily armed. A former security policeman and senior executive member of the right wing Afrikaner Weerstandsbeweging AWB, (Afrikaner Resistance Movement) Piet Rudolph, announced that the AWB and the

Boerstaat Party (BSP), had planned a loan scheme to provide arms to a further one million whites for the next five years. The fact that many fascist organisations in South Africa have taken up arms against the black majority has not met with any credible response from the regime.

18.3.0 Vigilante groups have their origins in the systems which have been built up around the unpopular Apartheid created structures. Their growth has been actively encouraged or tacitly condoned by the Security forces and local police. The so-called "black-on-black" violence must be viewed in this context. By this method, the regime seeks to divide the black majority. The violent situation in Natal must be seen in this context. (See Annexes 5 - 8 attached).

18.4.0 Hit squads, including the Civilian Cooperation Bureau (CCB), have now clearly emerged as an essential component of the regime's strategy of repression, and operate within the structures of the South African Police and of the South African Defence Force. These squads have perpetrated a full spectrum of atrocities in the defence of Apartheid. Evidence emerging from the Harms Commission of Inquiry suggests involvement at cabinet level. In the meantime, and in spite of the Commission of Inquiry, hit squads continue their activities. (See Annex 9 attached).

To mention a few:

On 7 April, Aldo Mogano (age 22) an Alexandra township activists was murdered by a South African hit squard.

On 23 April, Sam Chand, PAC member, his whole family of four and his security guard were murdered in Botswana by a South African hit squad.

On 28th April, in Harare, Rev. Michael Lapsley, and ANC member lost one arm, one leg and an eye due to the explosion of a parcel bomb sent by a South African hit squad.

18.5.0 Escalating violent Apartheid state repression, both formal and informal - most notably in the Natal Province is accentuating many of the typical adverse and dehumanising consequences of Apartheid such as forcible population displacements, destabilisation of and/or denial of family life, disruption of education, juvenile delinquency, high rate of crime and chronic physical insecurity. (See Annexes 10 and 11 attached).

18.6.0 In summary, it must be said that all the powers of repression available to the Apartheid regime are still intact and continue to be exercised. The lifting of the State of Emergency alone will not signal the end of repression since all the awesome powers of the state are available through permanent legislation such as the Internal Security Act. At the same time all the fundamental pillars of apartheid and their repressive and destructive consequences remain intact. These include the Group Areas Act, Bantu Education Act, Bantu Authorities Act, Population Registration Act and the Land Act.

III GUIDELINES TO NEGOTIATIONS

19.0.0 Though the Declarations provide clear guidelines for the commencement of the process of negotiation in good faith and in an atmosphere free of violence, the Apartheid regime continues to hold that these same guidelines are issues subject to substantive negotiations.

IV PROGRAMME OF ACTION

20.0.0 The Programme of Action,common to both Declarations,stipulates that all existing pressures including sanctions against Apartheid South Africa should be maintained until the eradication of Apartheid is rendered irreversible. However, Mr. F.W. de Klerk, on the basis of strictly rhetorical promises of change unbacked by any action, has recently been officially received,most notably,in Western capitals. This sends the most regretable signals to the regime and will jeopardise efforts to create the necessary climate for negotiations. For example, the United Kingdom has unilaterally lifted the voluntary restrictions on new investments in South Africa as originally adopted by the European Economic Community (EEC) and is campaigning for the EEC to lift its package of santions. Also Portugal is actively campaigning for the lifting of all pressures on the apartheid regime.

C

CONCLUSION

21.0.0 In fulfilment of its mandate, the Monitoring Group of the Ad-Hoc Committee of the Organisation of African Unity on Southern Africa conducted extensive consultations with National Liberation Movements, anti-apartheid organisations, monitoring groups and individuals concerned to ascertain the implementation of the principles, preconditions, guidelines to negotiations and programme of action contained in the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa and the United Nations Consensus Declaration on Apartheid and Its Destructive Consequences in Southern Africa which are designed to ensure the eradication of the Apartheid system.

21.1.0 The Declarations categorically state that it is essential that the necessary climate be created for negotiations to begin. The onus of creating the necessary climate through unconditionally

meeting the five preconditions laid down in the Declarations lies with the Apartheid regime. Irrefutable evidence confirms that the Apartheid regime has not yet met the preconditions. Consequently, it cannot be said that a necessary climate for negotiations has been created. by the Apartheid regime.

21.2.0 The international community, through the United Nations Consensus Declaration on Apartheid and Its Destructive Consequences in Southern Africa, has emphasised that "we shall continue to do everything in our power to increase support for the legitimate struggle of the South African people, including international pressure against the system of Apartheid UNTIL THAT SYSTEM IS ENDED....." Therefore, the international community is bound to sustain all forms of existing pressures against the Apartheid regime UNTIL THE APARTHEID SYSTEM HAS ENDED. The presssures against that regime include political isolation and comprehensive mandatory sanctions. As this report demonstrates, there has not been any fundamental or irreversible change in South Africa. The so-called changes which have led some members of the international community to believe that pressures should be relaxed vis a vis the Aparthied regime, fall far short of justifying that belief. Therefore, the recent sorjourn of Mr. F.W. de Klerk and the attendant suggestions made to relax sanctions and other measures against the Apartheid regime are tantamount to prematurely rewarding Mr. de Klerk, and jeopardising efforts to create the necessary climate for negotiations.

21.3.0 It is a fact that internal resistance and complementary international isolation and sanctions were instrumental in compelling the regime to unban the organisations and declare its willingness to enter into dialogue with the representatives of the oppressed majority. To remove internal and international pressues at this time would amount to removing the vital leverages which could compel the regime to end Apartheid.

21.4.0 The Declarations have laid down basic principles which must guide the process of eradicating Apartheid. The Apartheid regime has not positively and comprehensively pronounced itself on these fundamental principles, but utterances and periodic statements by its spokespersons indicate that the regime rejects these fundamental democratic principles. The regime has ruled out the democratic principle of majority rule based on one person one vote, on a common voter's roll, claiming that this would lead to "an unsophisticated majority vote." Instead the regime preaches "government by consensus." This concept, therefore, is in essence a demand that the white minority be given a veto over all major decisions.

21.5.0 Mr. Gerrit Viljoen, the Minister of Constitutional Affairs, recently announced twelve "minority rights" which the regime wanted included in a new constitution. Some of these "minority rights" concern the rejection of majority rule, insistence on power sharing and insistence on "Group Rights." Agreeing to these "minority rights" would inevitably result in protecting and perpetuating the cornerstones of the Apartheid system, albeit in another guise.

21.6.0 The international community must insist that the Apartheid regime should unconditionally implement at the least, the preconditions laid down in the two Declarations in order to create a necessary climate for negotiations leading to the drawing up of a constitution for a united, democratic and non-racial South Africa.

21.7.0 The Monitoring Group took note of the meeting between the Apartheid regime and the African National Congress at Groote Schuur, South Africa from the 2nd to the 4th of May 1990, and convened at the initiative of the African National Congress for the purpose of clearing obstacles to negotiations.

21.8.0 The Monitoring Group also noted that resulting from the meeting, the Apartheid regime reiterated its commitment to negotiations and undertook to review existing security legislation and committed itself to working towards resolving the existing climate of violence, lifting the State of Emergency, granting indemnity to political exiles and widening the definition of a political prisoner, bearing in mind experiences in Namibia and elsewhere. It also agreed to establish a joint working group with the ANC to make recommendations towards widening the definition of a political prisoner and facilitating the release of political prisoners, granting indemnity to political exiles and to report back to principals by 21st May, 1990.

21.9.0 On 7th June 1990, the Apartheid regime announced the lifting of the four (4) year old State of Emergency in the whole of South Africa except in the Province of Natal. Although the Monitoring Group took note of the fact that the State of Emergency has been lifted, it emphasizes the fact that the Public Safety Act which enables the Apartheid regime to impose the State of Emergency is still intact. The lifting of the State of Emergency as announced, therefore, cannot, on its own, be seen as a profound and irreversible measure towards creating a necessary climate for negotiation.

22.0.0 Furthermore, the lifting of the State of Emergency alone will not signal the end of repression since all the awesome powers of the state are available through permanent legislation such as the Internal Security Act. At the same time all the fundamental pillars of Apartheid and their represssive and destructive consequences remain intact. Therefore, nothing short of the fulfilment of all the conditions which are essential to the creation of the necessary climate for negotiations should be deemed sufficient in terms of the demands set out in both Declarations.

23.0.0 As reflected in this report, the Apartheid regime has not yet taken any profound and irreversible steps, nor has it fulfilled the objectives to which it committed itself at the Groote Schuur Meeting, toward the creation of the necessary climate for negotiations. Until the Apartheid regime fulfills the commitments it made at the Groote Schuur Meeting, to paraphrase Dr Nelson Mandela, those commitments are of no more worth than the paper on which they are written.

24.0.0 As the African National Congress, particularly in its briefing to the Ministerial Meeting of the Ad-Hoc Committee given by its Deputy President, Dr. Nelson Rolihlahla Mandela, in Cairo, Egypt on 20 April 1990,has cautioned, even though its important initial contacts with Pretoria may have raised hopes as to the willingness of the regime to cooperate, it is all the more important for the international community to intensify actions to compel Pretoria to take concrete and positive measures to at least match the hopes raised.

25.0.0 Summing up the failure of the Apartheid regime to take profound and irreversible steps towards the eradication of Apartheid, Dr. Nelson Mandela, reminded the international community that: "I went to prison without a vote, I have come out of prison and I am still without a vote."

LUSAKA

ZAMBIA

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Forty-fourth session
Agenda item 34

THE SITUATION IN CENTRAL AMERICA: THREATS TO INTERNATIONAL PEACE AND SECURITY AND PEACE INITIATIVES

Letter dated 12 July 1990 from the Permanent Representatives of Costa Rica, El Salvador, Guatemala and Honduras to the United Nations addressed to the Secretary-General

We have the honour to enclose the "Declaration of the Central American Governments concerning the events in the fraternal Republic of Nicaragua", adopted by the Governments of Costa Rica, El Salvador, Guatemala and Honduras on 10 July 1990.

We should be grateful if you would have the attached document circulated as an official document of the General Assembly at its forty-fourth session, under agenda item 34.

(Signed) Emilia CASTRO DE BARISH
Chargé d'affaires a.i.
Permanent Mission of Costa Rica to the United Nations

(Signed) Rafael Angel ALFARO
Chargé d'affaires a.i.
Permanent Mission of El Salvador to the United Nations

(Signed) Rafael CASTELLANOS CARILLO
Chargé d'affaires a.i.
Permanent Mission of Guatemala to the United Nations

(Signed) Roberto FLORES BERMUDEZ
Permanent Representative
Permanent Mission of Honduras to the United Nations

ANNEX

Declaration by the Central American Governments concerning the events in the fraternal Republic of Nicaragua, adopted on 10 July 1990

In response to the serious events taking place in the fraternal Republic of Nicaragua, the Governments of Costa Rica, El Salvador, Guatemala and Honduras have agreed to issue the following

DECLARATION

I. They express their concern at the violent turn events have taken in Nicaragua as a result of the general strike proclaimed in recent days which has led to paralysis of the country, to confrontations between different groups and, regrettably, to loss of human life.

II. They note with profound concern that this movement constitutes a threat to the nascent process of democratic institution-building and national reconciliation that emerged from the recent elections in which the Nicaraguan people gave perfectly clear expression to its political will.

III. They state that, in conformity with the Esquipulas II peace procedure signed by the former President of Nicaragua and backed by all political and social forces in that fraternal country, the Central American peoples have opted for dialogue and political negotiations as the appropriate means of bringing about national reconciliation and democratization.

IV. In this sense, they reiterate their firm and resolute support for the constitutional Government of the Republic of Nicaragua under the presidency of Her Excellency Mrs. Violeta Barrios de Chamorro.

V. They urge the various sectors of Nicaraguan society to abandon the violent attitudes which have led to this distressing situation and to contribute effectively to the creation of a climate which will make possible a negotiated solution to the present crisis and the strengthening of democracy in that country.

VI. Lastly, they appeal to the international community to extend its valuable diplomatic and financial assistance to the Government of Nicaragua in the search for a solution to the crisis through which it is passing.

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Forty-fourth session
Agenda item 8

ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Letter dated 17 July 1990 from the Permanent Representatives of The Bahamas, Colombia and Haiti to the United Nations addressed to the Secretary-General

We have the honour to request you to convene a meeting of the forty-fourth session of the General Assembly, for the purpose of resuming consideration of agenda item 114, entitled "Enhancing the effectiveness of the principle of periodic and genuine elections", and considering technical assistance for the Haitian electoral process in the context of human rights.

In order to provide further information, we enclose herewith the letter of 23 June 1990 sent to you by Mrs. Ertha Pascal Trouillot, President of the Interim Government of Haiti.

(Signed) Mr. Lyonel PAQUIN
Ambassador,
Permanent Representative of
Haiti to the United Nations

(Signed) Mr. James B. MOULTRIE
Ambassador,
Permanent Representative of
The Bahamas to the United Nations

(Signed) Enrique PEÑALOSA
Ambassador,
Permanent Representative of
Colombia to the United Nations

ANNEX

Letter dated 23 June 1990 from the Interim President of Haiti to the Secretary-General

I have pleasure in expressing my sincere gratitude to you for your clear willingness to request the Security Council to provide a specific mandate for the assistance requested by Haiti.

I also wish to thank you for the technical and professional co-operation already under way as a result of the financing provided by the United Nations Development Programme (UNDP), in response to the appeals I made as President of the Interim Government. The co-operation in question, which began just 10 days after my investiture, was the first mission conducted by an agency providing funding for electoral purposes.

In view of such favourable measures, it was most regrettable that for health reasons I was unable to take up your invitation of 12 June 1990 and come in person to meet with you at United Nations Headquarters. I regret this particularly in view of the praiseworthy efforts made by the United Nations Resident Co-ordinator in Haiti, Mr. Reinhart Helmke, and in view of the visit to Port-au-Prince by your special envoy, Mr. Jean-Claude Aimé, to discuss the assistance requested in detail.

I am also extremely grateful to you for the initiative you took of sending in addition the mission headed by your personal representative, Ambassador Joao Augusto de Medicis.

I can assure you that all sectors responsible for holding free, fair and credible elections - the Council of State, a body specifically set up for the transition to democracy, the Interim Electoral Council, an independent body responsible for the electoral process, and the Haitian Armed Forces, which are responsible for security - join me in requesting assistance from you.

I wish to avail myself of this opportunity to draw to your attention the points set forth below, which concern, on the one hand, the observation and verification of the regularity of the electoral process and, on the other hand, public security, upon which participation by voters and consequently the credibility of the outcome depend:

Observation and verification of the elections, covering the entire electoral process, particularly registration of voters on the electoral rolls, registration of candidatures, freedom of expression and freedom of political parties to mobilize, respect for the equality of candidates in the electoral campaign, and independent verification of the outcome of the vote;

Finalization of the conditions under which such international observation can produce an independent, valid assessment of the prospects for building a stable democracy on the basis of the outcome of the elections;

Ways of ensuring a visible and active fundamental international presence in order to dissipate voters' fears and to ensure representative participation by the population;

Assistance, by advisors with experience in security matters, for the Co-ordination Committee for Electoral Security of the Haitian Armed Forces in developing and implementing electoral security plans;

Observation by special United Nations staff of the implementation of such security plans throughout the country;

Co-ordination between CARICOM, which has made an offer of assistance, and UNDP with a view to ensuring security at polling stations and in the vicinity of polling stations.

In this connection, the Haitian Government wishes to stress the need to co-ordinate multilateral assistance so that it is as effective as possible.

These are the concerns that the Haitian Government wishes to voice with regard to the prerequisites for the smooth conduct of credible elections; the United Nations is warmly invited to contribute to the holding of such elections.

I wish once again to express my great appreciation for the support offered to the Haitian nation. It is with keen admiration that Haiti follows your courageous efforts to promote peace and progress in the great United Nations family.

(Signed) Ertha PASCAL TROUILLOT
Interim President of
the Republic of Haiti

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ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Letter dated 17 July 1990 from the Permanent Representatives of the Bahamas, Colombia and Haiti to the United Nations addressed to the President of the General Assembly

Corrigendum

Page 1

The heading of the document should read as above.

Page 2

The second paragraph should read as follows:

In order to provide further information, we enclose herewith the letter of 23 June 1990 from Mrs. Ertha Pascal Trouillot, President of the Interim Government of Haiti, to the Secretary-General of the United Nations.

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ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Letter dated 17 July 1990 from the Permanent Representatives of the Bahamas, Colombia and Haiti to the United Nations addressed to the President of the General Assembly

Addendum

The present draft resolution is submitted for the consideration of the General Assembly.

Draft resolution

Assistance to Haiti

The General Assembly,

Taking note of the letter dated 23 June 1990 from the President of the Interim Government of the Republic of Haiti to the Secretary-General, 1/ in which the President requested the assistance of the United Nations in order to achieve the peaceful and effective development of the forthcoming electoral process,

Reaffirming the sovereign right of the people of Haiti to choose their own destiny and to participate freely in determining it without any external interference,

Aware of the efforts of the people of Haiti to consolidate their democratic institutions in face of the intent of destabilization by elements linked to the former tyrannical régime,

---

1/ A/44/965 and Corr.1, annex.

1. Requests the Secretary-General to provide the broadest possible support to the Haitian Government, in co-operation with regional organizations and Member States, by granting it the technical and administrative assistance to the electoral process that has been requested in the letter from the President of the Interim Government of the Republic of Haiti to the Secretary-General; 1/

2. Urges the international community and the international organizations to increase their technical, economic and financial co-operation with Haiti in order to support Haiti's economic and social development efforts;

3. Requests the Secretary-General to submit to it a report on the implementation of the present resolution.

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GENERAL ASSEMBLY
Forty-fourth session
Agenda item 47
QUESTION OF CYPRUS

SECURITY COUNCIL
Forty-fifth year

Letter dated 17 July 1990 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to submit, enclosed herewith, a letter addressed to you by His Excellency Mr. Özer Koray, Representative of the Turkish Republic of Northern Cyprus, in connection with the Greek Cypriot application for full membership of the European Community (see annex).

I should be grateful if the present letter and its annex were circulated as a document of the forty-fourth session of the General Assembly, under agenda item 47, and of the Security Council.

(Signed) Mustafa AKSIN
Ambassador
Permanent Representative

ANNEX

Letter dated 17 July 1990 from Mr. Özer Koray to the Secretary-General

I have the honour to attach herewith a letter and its annex, a memorandum addressed by President Rauf R. Denktas to the President in Office of the Council of Ministers of the European Communities on 12 July 1990 in relation to the recent Greek Cypriot application for membership of the European Communities (see appendix).

This unilateral application creates a fundamentally altered situation and constitutes a negative development. It was made in spite of the views expressed by the Turkish Cypriot side and in violation of operative paragraph 5 of the United Nations Security Council resolution 649 (1990). It, therefore, constitutes a major impediment in the way of the negotiating process. This development is totally contrary to the letter and spirit of resolution 649 (1990) and cannot be expected to facilitate the good offices mission of the United Nations Secretary-General or the resumption of the talks in line with that resolution.

(Signed) Özer KORAY
Representative

APPENDIX

Letter dated 12 July 1990 from Mr. Rauf Denktas to the President in Office of the Council of the European Communities

I have the honour to attach a memorandum (see attachment) relating to the recent application addressed to you by the Greek Cypriot authorities in Cyprus. You will, I am sure, appreciate the very great concern that this "application" causes to the Turkish Cypriot people of Cyprus. I should therefore be grateful if you could convey this memorandum to the Council of Ministers for their consideration.

(Signed) Rauf R. DENKTAS
President

ATTACHMENT

TURKISH CYPRIOT MEMORANDUM
ADDRESSED TO THE COUNCIL OF MINISTERS
OF THE EUROPEAN COMMUNITIES IN RESPECT OF AN
"APPLICATION" FOR MEMBERSHIP BY
"THE REPUBLIC OF CYPRUS"

1. The President in office of the Council of Ministers has been sent three applications, dated 3 July 1990, by a body calling itself "the Government of the Republic of Cyprus" seeking membership for "Cyprus" (not "the Republic of Cyprus") in the three European Communities. In this connection the Turkish Cypriot side respectfully requests the Council of Ministers to take into consideration the following objections and observations.

Cyprus is a two-community island.

2. The basis of the Turkish Cypriot opposition to the present application is that the Republic of Cyprus as originally conceived and brought into being in 1960 was founded on the existence of two separate and politically equal communities - one Turkish, the other Greek. Whatever may have happened since then - and the essential elements will be recalled below - the fact remains that there are still two separate communities in Cyprus and a legal background which recognizes the separateness and political equality of these two communities. Even if the Greek Cypriot community has in a number of contexts succeeded in assuming the mantle of "the Republic of Cyprus", that is not a consideration that can now entitle it to represent the whole of Cyprus in so fundamental a development as the acquisition of membership of the European Communities or at all.

Membership of the ECs is unworkable in a divided island.

3. Unlike any other international relationship into which the Greek Cypriot community has purported to enter - albeit illegally - in the name of "the Republic of Cyprus", membership of the European Communities would involve a degree of participation by the Communities in the life of their Members which is quite unworkable in the circumstances presently prevailing in Cyprus and pending a mutually acceptable comprehensive settlement in the form of a bi-communal, bi-zonal, federal republic. The European Communities cannot have, and should not consider having, as a single member, an island which is divided into two parts, each separately governed and divided by a firm boundary, when membership demands, among other things, free movement of goods, persons, services and capital, not to mention the application of common policies on such important matters as agriculture, fisheries and transport throughout the territories of the Members of the Communities.

The application is misconceived.

4. The applicant, in submitting an application in respect of "Cyprus" (not, it should be noted, "the Republic of Cyprus") suggests a unity of the island which is not supportable either in law or in fact. It will be useful to recall the essential elements in the situation. They are, regrettably, too often overlooked.

Early recognition of the two-community nature of Cyprus.

5. There are two different peoples in Cyprus. This historical fact was underlined by the British Government during the period when Cyprus was approaching independence. The British Colonial Secretary, Mr.Lennox Boyd said on 19 December 1956: "... it will be the purpose of Her Majesty's Government to ensure that any exercise of self-determination should be effected in such a manner that the Turkish Cypriot community, no less than the Greek Cypriot community, shall, in the special circumstances of Cyprus, be given freedom to decide for themselves their future status. In other words, Her Majesty's Government recognize that the exercise of self-determination in such a mixed population must include partition among the eventual options". This statement was confirmed by the Prime Minister, Mr. Macmillan, on 26 June 1958, who described these assurances as "pledges".

Bi-communal essentials of the 1960 settlement.

6. Despite the reference to "partition" as an option, in answer to Greek Cypriot claims for union of Cyprus with Greece, this was not the solution eventually adopted. Instead, a compromise was reached along the lines of a bi-communal State, in which the respective legal and political positions of the two communities were carefully regulated. Absolutely fundamental to the division of power between the two communities was the idea that Cyprus could not be ruled by one community to the exclusion of the other. Both communities had to participate as partners in all decision making and in the administration of the island. Equally fundamental was the idea that the greater numbers of the Greek Cypriot community could not be used to impose unacceptable policies or decisions upon the Turkish Cypriot community. Adequate checks and balances were provided in the constitution for the preservation of the national identity and partnership status of each community.

International and constitutional nature of the 1960 settlement.

7. These fundamentals were incorporated in what has come to be called "the 1960 settlement". It is characterized by the fact that it is both an international and a constitutional settlement. Thus the subsequent conduct of the Greek Cypriot community has to be judged not only in terms of constitutional law but also of international law.

Strict division of power between the two communities.

8. The 1960 settlement consisted, first, of the Zurich and London Agreements of 1959. These were international treaties which raised to the level of international legal obligation the undertakings given by the parties. Thus, the Zurich Agreement, concluded between the Greek and Turkish Prime Ministers on 11 February 1959, established the Basic Structure of the emergent Republic of Cyprus. It provided, as basic articles for inclusion in the Cyprus Constitution, a clear and balanced division of power between the Greek and Turkish Cypriot communities, including provision for a Greek Cypriot President, elected solely by Greek Cypriots, and a Turkish Cypriot Vice-President, elected solely by Turkish Cypriots, and seventy percent - thirty percent distribution of seats in the Council of Ministers and the legislature, as well as the same allocation of places in the administration. Also, the President and the Turkish Cypriot Vice-President were granted veto powers which would have enabled them to block measures prejudicial to their respective communities. Executive power "ensued from the President and Vice-President acting conjointly." Another essential feature of the basic articles was the specific exclusion of the total or partial union of Cyprus with any other State.

International guarantee of the Settlement.

9. The undertakings given in these Agreements were reinforced by the Treaty of Guarantee of 1960, as well as by incorporation in the Cyprus Constitution itself. The parties to these treaties were the Republic of Cyprus, on whose behalf "the Greek Cypriot President and the Turkish Cypriot Vice-President" signed, Greece, Turkey and the United Kingdom. These treaties created for the parties rights and duties under international law. In the Treaty of Guarantee especially the Republic of Cyprus undertook to ensure respect for its constitution, while Greece, Turkey and the United Kingdom, taking note of this undertaking, recognized and guaranteed the state of affairs established by the Basic Articles of the Constitution. This Treaty also expressly provided that "in so far as common or concerted action may prove impossible, each of the three guaranteeing Powers reserved the right to take action with the sole aim of re-establishing the state of affairs established by the present Treaty."

Early Greek Cypriot rejection of Turkish Cypriot participation.

10. Within three years of the conclusion of these solemn compacts the Greek Cypriots had embarked upon a deliberate course of subverting the basic articles. This culminated in the resignation of the neutral President of the Constitutional Court and the eventual denial of each and every right given to Turkish Cypriots under the Constitution. In pursuance of the so-called "Akritas Plan" that was aimed at uniting the island with Greece, the Turkish Cypriots were ousted from their guaranteed positions in the organs

of government, the political equality and the vested rights of the Turkish Cypriots were denied, while the Greek Cypriot members of the House of Representatives enacted, in flagrant violation of the 1960 settlement and the basic articles of the Constitution, legislation providing for the operation of various organs of government without Turkish Cypriot participation. In June 1967 the Greek Cypriot legislature went so far as unanimously to pass a resolution in favour of "enosis", union with Greece, so clearly prohibited by Article 185 of the Constitution.

Separation of the Turkish Cypriot community.

11. Since December 1963, the Turkish Cypriot community, faced by discrimination, threats and physical attacks was, for its self-preservation, compelled gradually to withdraw into self-administering enclaves, cut off from public services and unassisted by public monies. The fact of administrative and territorial division between the communities was acknowledged eleven years later by the Foreign Ministers of Greece, Turkey and the United Kingdom in the Declaration of 30 July 1974, which "noted the existence in practice in the Republic of Cyprus of two autonomous administrations, that of the Greek Cypriot community and that of the Turkish Cypriot community." It is further attested by the maintenance of a dividing line across the island by UNFICYP, which had arrived in Cyprus with the consent of both sides in March 1964 as a result of the break up of the partnership state and its administration. In due course, in 1975, the Turkish Cypriot administration which had been administering Turkish Cypriots since the breakdown of the legitimate partnership government, developed into the Turkish Federated State of Cyprus, by way of adaptation to the circumstances, and for the purpose of creating the federated Turkish Cypriot wing of a future federal republic of Cyprus, thus re-establishing the defunct partnership state in a federal form.

Constitutional illegitimacy of Greek Cypriot action acknowledged.

12. The lack of constitutional foundation for the Greek Cypriot administration was acknowledged by the Foreign Ministers of Greece, Turkey and the United Kingdom in a Declaration of 30 July 1974 when they recorded that "among the constitutional questions to be discussed should be that of an immediate return to constitutional legitimacy, the Vice-President assuming the functions provided for under the 1960 Constitution." Such words could not have been used if the prevailing condition at the time had been one of adherence to the Constitution. In fact Makarios had openly declared the 1960 Agreements and the Constitution to be "dead and buried", and he offered Turkish Cypriots minority rights in what he regarded a Greek Cypriot state. Here was a plain recognition, therefore, that there was not a legitimate government representing the whole population. And the reference to the need for the Vice-President to assume the functions provided for under the 1960 Constitution, coupled with the well-known fact that the Vice-President had been

Turkish and had not voluntarily renounced the exercise of his functions, indicates appreciation that he had been unlawfully excluded from his office - an exclusion which in constitutional terms means - inter alia - that the Turkish Cypriot community was deprived of its right under Article 57 of the Constitution to veto decisions relating to foreign affairs (or, conversely, to approve such decisions by deliberately acquiescing in them) and the collapse of the partnership state.

1974 - 'Enosis' thwarted by guarantor action of Turkey.

13. Prior to this, however, certain Greek and Greek Cypriot elements had carried a stage further their repudiation of the prohibition of "enosis". For the purpose of bringing about immediate 'Enosis', in July 1974 a Greek-inspired and militarily supported coup took place against Archbishop Makarios, who himself had previously maintained that by destroying the constitutional order he had brought Cyprus to the "nearest point to Enosis".. In the exercise of its rights and duties as a guarantor of the 1960 settlement and upon the urgent plea of the Turkish Cypriot side for help, Turkey landed forces in Cyprus in order to safeguard the Turkish Cypriot population and prevent a takeover of the island by Greece. They freed the northern part of the island from Greek and Greek Cypriot forces, which Makarios had described to the Security Council on 19 July 1974 as "forces of invasion from Greece", and made it a haven for the whole Turkish Cypriot population including those stranded in the enclaves in the south - a process which was completed by the 1975 Agreement on the Voluntary Regrouping of Populations. There now co-exist on the island two separate administrations - the Greek Cypriot administration in the South which has assumed the role of "the Republic of Cyprus" and the Turkish Cypriot administration which has established itself as the Turkish Republic of Northern Cyprus in view of the refusal of the Greek Cypriot side to agree to share power with the Turkish Cypriots on the basis of equality as envisaged in the 1977 and 1979 High Level Agreements.

Greek Cypriots not the lawful government of Cyprus.

14. In the circumstances set out above, it will be readily understood why the Turkish Cypriots regard as unlawful the assumption by the Greek Cypriots of the role of "the Republic of Cyprus". That Republic was as ordained and in the image of the 1960 settlement. The Greek Cypriots overthrew that settlement in December 1963. Yet they appear to have been accepted internationally as the appropriate representatives of Cyprus. This cannot be right, legally or morally, and no one should be surprised by the view that the Turkish Cypriots take of the situation.

International illegality of Greek Cypriot action.

15. The Turkish Cypriots believe that the unilateral application by the Greek Cypriots to join the Communities is an international act of an entirely different order of intensity and significance to anything that has come before. The Council of Ministers of the European Communities may not lawfully disregard the illegality of the position and conduct of the Greek Cypriot regime in Cyprus when the latter purports to present itself as the "government of the Republic of Cyprus." The objection now raised by the TRNC on behalf of the Turkish Cypriot people to the validity of the application rests upon the lack of entitlement of the Greek Cypriot community to make the application in the name of "Cyprus" or, indeed, of "the Republic of Cyprus." This objection rests only indirectly upon the constitutional illegitimacy of the Greek Cypriot regime for it is possible to conceive of cases in which merely constitutional illegitimacy would not preclude a regime from seeking admission to an international organization on behalf of a State. However, where, as in this case, the constitutional illegitimacy occasions an international illegitimacy, the position is quite different and cannot be ignored by the European Communities. Moreover, in the case of Cyprus where the bi-communality of the state and its government was the precondition for legitimacy, this unilateral act by Greek Cypriots is a clear and unacceptable action to impose their political will on the Turkish Cypriots on a matter which will affect generations to come.

Greek Cypriot application violates international and constitutional ban on Enosis.

16. The application is also open to objection on the ground, arising from Article 1 of the Treaty of Guarantee, and echoed in Article 185 of the Constitution, that the Republic of Cyprus has undertaken "not to participate in whole or in part, in any political or economic union with any State whatsoever." This limitation is broad enough to prohibit the link with Greece that a membership initiated and negotiated by the Greek Cypriots alone would bring about, even within the framework of the European Communities.

Comparison with Germany is false.

17. Greek Cypriot awareness of the vulnerability of the application is suggested by the following report in the press (see The Wall Street Journal, 5 July 1990) that Mr.Iacovou, the Foreign Minister of the Greek Cypriot regime, said:

> "the island's political situation shouldn't have an effect on his country's membership application. He drew an analogy with Germany, saying that the division of that country into East and West had never been viewed as a barrier to EC membership."

The "analogy" is quite false and reveals precisely the weakness of the Greek Cypriot application. When the Federal Republic of Germany became an original member of the European Communities, no claim was made by it that the territorial scope of its membership extended beyond the area under its actual control. It did not claim to represent East Germany for purposes of becoming a member.* It is indeed significant that the only territorial matters raised by the FRG related to the position of Land Berlin and the Saar. In the present situation, however, it is evident that the Greek Cypriots do not seek to limit their application in a comparable manner.

Application is a nullity. No action should be taken on it.

18. The present opposition to the Greek Cypriot applications is of a fundamental nature. It arises in limine. The internationally unlawful character of the authority that purports to make the application deprives it of the capacity so to act, while, the scope of the application and the manner of its making both taint the application with invalidity. It is a nullity. In law, therefore, there exists no application that the Council of Ministers may refer to the commission for an opinion and no application that the commission may properly receive. The suggestion is, accordingly, respectfully made that the proper course is for the Council of Ministers to take no action on the application. If, nonetheless, this council of Ministers should feel that it is necessary or desirable that the commission should express an opinion on the validity of the application, then the reference to the Commission should be precisely limited to this. It should not be a reference to the commission for an opinion on the substance of the application.

TRNC would welcome EC membership but only after settlement.

19. Notwithstanding this the TRNC does not wish to create the impression that it is opposed to the eventual membership of the European Communities by a State of Cyprus restored to legality and stability by a settlement freely negotiated between parties of equal standing. When such a political settlement has been achieved, the Turkish Cypriot community will be no less desirous than the Greek Cypriot community to secure membership for the whole of Cyprus in a manner that will ensure that the benefits of such

* A leading authority of the international status of Germany, Professor F.A.Mann, has said: "... the Federal Government is not the Government in the East. It is, therefore, unable to render treaties effective in respect of the East. Hence, it cannot conclude treaties which require implementation in the East. Nor, it appears, has the Federal Republic ever attempted to do so." (Studies in International Law (1973), p. 702.)

membership, as well as its burdens, are enjoyed and borne by both communities genuinely, without discrimination between them.

Greek Cypriot admission would mean a second vote for Greece.

20. In the meantime, it must be recognized that the effect of the admission to the European Communities of the Greek Cypriot side under the assumed title of "the Republic of Cyprus" represented as it is today exclusively by the Greek Cypriot element in the island would in effect, be to give to Greece a second vote in all the deliberations of the Communities. There is no room for the pretence that, left to itself, the Greek Cypriot community, irrevocably committed in spirit as it has always been to union with Greece, would act within the organs of the European Community as anything other than a proxy of Greece. The only way to ensure that Cyprus acts as a fully independent member of the European Communities is to insist that membership should not be given to it until there is reasonable certainty that its foreign and economic policy will not be subservient to the interests of any neighbor. That can only be assured by the establishment within Cyprus of a system of government reflecting the existence of the two communities, each possessing the capacity to prevent the eploitation of the country's position for the sole or disproportionate benefit of the other.

Application violates most recent UN Security Council resolution.

21. In its most recent resolution on Cyprus, of 12 March 1990 (649(1990)), the UN Security Council called on "the parties concerned to refrain from any action that could aggravate the situation." In the specialized vocabulary that has developed in this context, the words "the parties" means not only the two Cypriot communities but the interested governments, including, with special reference to the present context, Greece. The present move clearly aggravates the situation by destroying the equality of status between the two communities that is the essential foundation for the continuance of negotiations on the wider question.

Membership can only grow out of settlement. Not vice versa.

22. It must be realized that the entry into the European Communities of a uniquely Greek Cypriot state cannot contribute to the resolution of the differences between the two communities. Participation in the European Communities can only grow out of the creation of a new Republic of Cyprus that fully reflects the proper status and role of both communities.